

This letter answers questions concerning the taxation of different lease charges. See 86 Ill. Adm. Code 130.220. (This is a GIL).

July 17, 2000

Dear Xxxxx

This letter is in response to your letter dated April 27, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

The purpose of this letter is to request your advice on the taxability of the attached charges related to *Long Term Vehicle Leases* (more than 12 months). We also request a reference to a code section, revenue bulletin, regulation or any other basis for your opinion.

These mentioned charges occur at various times during the cycle of a lease and are shown accordingly. If your State allows an option to collect the tax upfront or over the rental stream, we request that you assume we elect the method of collecting tax over the rental period.

When complete please mail your response to my attention with the enclosed mailing label.

If you have any questions please feel free to contact ####. Thank you in advance for assistance in this matter.

In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. See the enclosed copies of 86 Ill. Adm. Code 130.220 and 130.2010. As the end users of tangible personal property located in Illinois, lessors incur Use Tax on the lessors' cost price of the property. Since lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges. In Illinois, a true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

The alternative to a true lease is a conditional sale. In Illinois, a conditional sale is usually characterized by a nominal purchase option at the close of the lease term. This type of transaction is considered a conditional

sale at the outset of the transaction making all receipts subject to Retailers' Occupation Tax. See Section 130.2010. In this situation, lessors/retailers may give Certificates of Resale to their suppliers for tangible personal property transferred subject to a conditional sales agreement. The lessors/retailers owe Retailers' Occupation Tax on any installment payments when they are received by the lessors/retailers. The lessees/purchasers owe corresponding Use Tax on the amount of the installment payments that are collected by the lessors/retailers.

As stated above, lessees do not incur any tax liability in a true lease situation. However, it is typical of true leases to contain contractual provisions stating that the lessees will *reimburse* the lessors for their tax costs. This is not a matter of Illinois tax law but of private agreement between lessors and lessees. If the lessees agreed to such provisions, they are bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

The State of Illinois imposes no Retailers' Occupation Tax or Use Tax on rental receipts. Since a lessee incurs no Retailers' Occupation Tax or Use Tax liability on the lease of an automobile for a lease period in excess of one year, the lessee generally incurs no such tax liability on any related lease charges such as late payment fees, disposition fees, lease termination fees, acquisition fees, excess mileage fees, or fees for excess wear and tear, service fees, or legal fees.

As noted above in true lease situations, the lessors incur Use Tax on the purchase price of the vehicles. When the lease term ends, possession of the vehicle reverts back to the lessor. The lessors may then exercise several options with the vehicles, such as re-leasing the vehicles, selling the vehicles, or trading the vehicles in on other vehicles that will be leased. If a lessor trades the vehicle in on the purchase of another vehicle that it intends to lease, that lessor will receive a trade-in credit.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See the enclosed copy of 86 Ill. Adm. Code 130.101. "Gross receipts" are considered to mean all the consideration actually received by the seller, except traded-in tangible personal property. See the enclosed copies of 86 Ill. Adm. Code 130.401 and 130.425. The traded-in item must be of like kind and character as that which is being sold. Please note that, since lessees under true leases do not own the leased property, they have no property to trade-in when seeking a new lease. The same rules apply to other types of tangible personal property. For your general information, we have also included a copy of 86 Ill. Adm. Code 130.455 concerning motor vehicle leasing and advance trade-in allowances.

Federal luxury taxes may be deducted from the gross receipts from sales of tangible personal property that are subject to Retailers' Occupation Tax liability. See generally 86 Ill. Adm. Code 130.445.

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I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.